

Section 504

Of the Rehabilitation Act



OKLAHOMA
Education



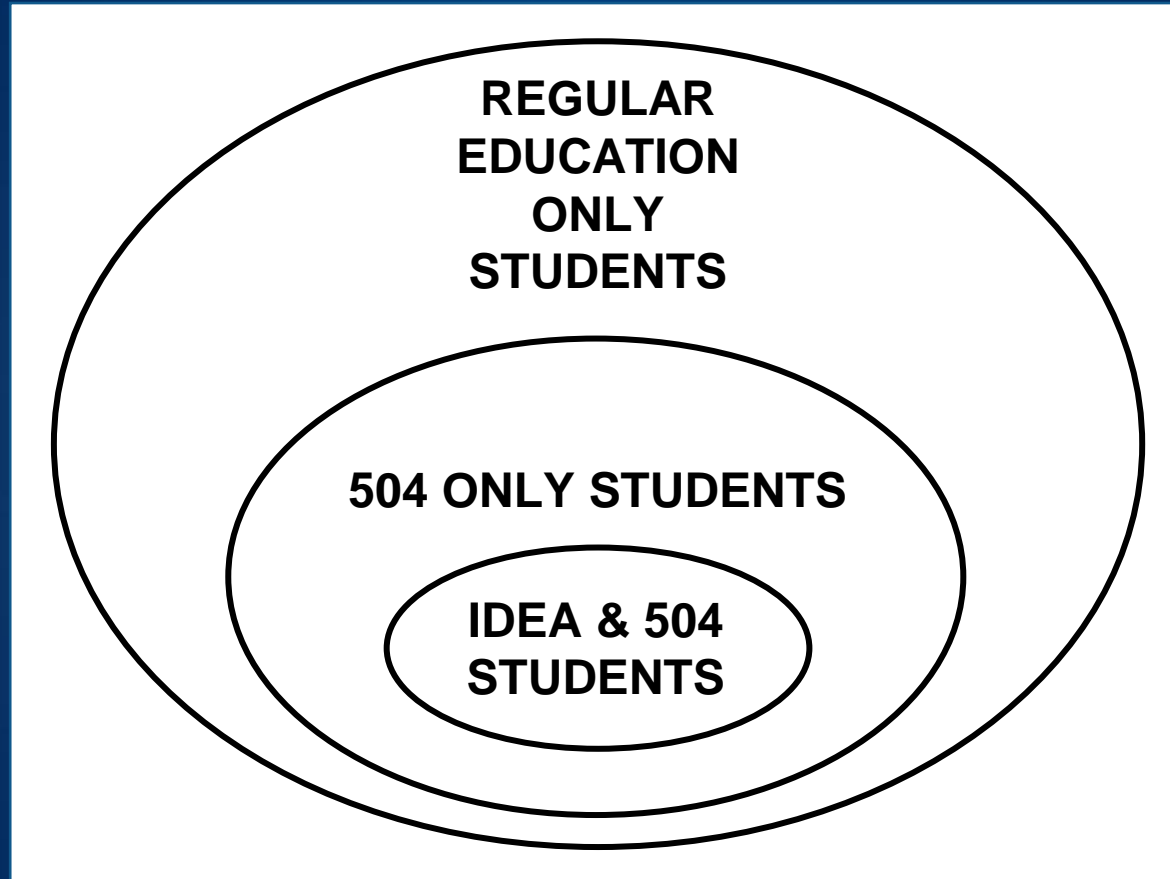
Section 504

What is Section 504?

- A civil rights law that prohibits discrimination based on disability in programs and activities receiving federal funds. This law requires the needs of students with disabilities to be met as adequately as the needs of their non-disabled peers.
- It is intended to level the playing field for students with disabilities to provide access to the learning environment.

What is Section 504? - 2

- **Section 504 states:** “No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” [29 U.S.C. §794(a), 34 C.F.R. §104.4(a)].



Child Find District Responsibilities

Every year, each district must:

- Identify & locate students with disabilities in the district.
- Notify parents/guardians of children with disabilities of the district's duties under Section 504.

Providing access to FAPE

- FAPE- Free Appropriate Public Education
- To each qualified student with a disability
- Regardless of the nature or severity of the disability

Student Discrimination Comes in Two Forms:

- The failure to provide a student with a disability a “free appropriate public education” (504 FAPE Discrimination).
- The failure to provide a student with a disability an equal opportunity to participate in or benefit from non-educational programs and activities (504 Non-FAPE Discrimination).

Key Features of FAPE Under Section 504

- Evaluation and placement procedures that guard against misclassification or inappropriate placement of students;
- Periodic reevaluation of students who have been provided special education or related services and prior to a significant change in placement;
- Provision of regular or special education and related aids and services that are designed so the individual educational needs of students with disabilities are met as adequately as the needs of non-disabled students are met;

Key Features of FAPE Under Section 504 - 2

- Education of students with disabilities with non-disabled students—to the maximum extent that this arrangement is appropriate for the needs of students with disabilities;
- A system of procedural safeguards (that is designed to inform parents of a school district's actions or decisions and to provide parents with a process for challenging those actions or decisions) that include notice; an opportunity for parents to review their child's records; an impartial due process hearing (with an opportunity for participation by the student's parents or guardians and representation by counsel); and a review procedure.

504 FAPE Discrimination Mistakes

Mistake-Failing to Conduct Appropriate “Child Find” Activities under Section 504...

- Especially in the “Response To Intervention (RTI) world” in which schools currently operate, increased “child find” concerns have risen as a common subject of OCR complaints and case law. Specifically, these complaints are that Section 504 evaluations have not occurred because school personnel are not timely engaging in child find activities while waiting for an RTI process to proceed or conclude for a particular student at issue.

Qualified Person with a Disability

- For purposes of public educational services, a qualified person with a disability is: of an age that persons with disabilities are provided such services; of any age that it is mandatory under state law to provide such services to persons with disabilities; or a person for whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

Students Protected Under 504

- Section 504 covers **qualified** students with disabilities who attend schools receiving Federal financial assistance.
- Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

Section 504: Definition of a Disability

- A person with a disability is defined as any person who:
 - **Has a physical or mental impairment which substantially limits one or more major life activities;**
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.

Physical or Mental Impairment

- The Section 504 regulatory provision...defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

Physical or Mental Impairment - 2

- Or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Special Circumstances

- Conditions that are episodic or in remission are covered if they create a substantial limitation in one or more major life activity while they are active.
- Students who are currently using illegal drugs ***are not*** covered or eligible under Section 504.

Examples of Physical or Mental Impairments

- May include, but are not limited to: ADHD, dyslexia, cancer, diabetes, severe allergies, asthma, cerebral palsy, epilepsy, hearing impairments, auto-immune disorders, and learning disabilities.

Does Any Impairment Automatically Equal Eligibility

- Does Any Impairment Automatically Equal Eligibility?
- No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

Determination

- The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on an individual basis.

What Does “Substantially Limits” Mean?

- Substantially limits is ***not*** defined in the federal regulations. However, in a letter from the Office for Civil Rights (OCR), they state, ***“this is a determination to be made by each local school district and depends on the nature and severity of the person’s disabling condition.”***

Special Considerations

- In considering “substantial limitations”, students must be measured against their same age, non-disabled peers in the general population and without benefit of medication or other mitigating measures such as learned behavioral or adaptive neurological modifications, assistive technology or accommodations.

Condition, Manner, and Duration

- Does not mean severe restriction or inability in performing major life activities.
- Consider the condition, manner, & duration.

Major Life Activities

- Includes but is not limited to:
 - Self-care, performing manual tasks, walking, seeing, hearing, speaking, sitting, thinking, learning, breathing, concentrating, eating, sleeping, major bodily functions, and interacting with others.

An Appropriate Evaluation Under Section 504

- School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at [34 C.F.R. 104.35](#).

How Much Documentation is Required?

- School districts should draw from a variety of sources so that the possibility of error is minimized.
- The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered.
- These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

Multi-Disciplinary Committee

- The amount of information required must be determined by the **multi-disciplinary committee** gathered to evaluate the student and must include enough information to make a knowledgeable decision.
- The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

Avoid Presumptions/Stereotypes

- In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

Placement

- Refers to the individualized educational instruction, services, supports, interventions, and modifications to policies a student receives from the school.
- The Section 504 team is responsible for identifying, and the school must provide, the placement needed for that student to receive FAPE.

Section 504 Plan

- Although a written plan is **not** explicitly required by Section 504's regulations, it is recommended that schools record these services and supports in a document called a Section 504 plan.
- OSDE-SES provides EDPlan as a resource to create the district's documentation of a Section 504 Plan.

504 Discipline Fact Sheet

Examples of 504 Accommodations

- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note-taking
- Frequent feedback
- Extra set of textbooks for home use
- Use of assistive technology
- Enlarged print
- Positive reinforcements

Examples of 504 Accommodations - 2

- Extra time to complete classwork and/or tests
- Rearranging class schedules
- Visual aids
- Preferred seating assignments
- Recording lectures
- Oral tests
- Individual contracts
- Extra time to move from class to class, other school activities

****...similar to IEP accommodations***

Section 504 and Service Animals

- The Americans with Disabilities Act (ADA) requires State and local government agencies, businesses, and non-profit organizations (covered entities) that provide goods or services to the public to make "***reasonable modifications***" in their policies, practices, or procedures when necessary to accommodate people with disabilities.

Definition of a Service Animal

- Under the ADA, a service animal is defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

ADA Service Animal Publication

- The service animal rules fall under this general principle. Accordingly, entities that have a "no pets" policy generally must modify the policy to allow service animals into their facilities. This publication provides guidance on the ADA's service animal provisions and should be read in conjunction with the publication *[ADA Revised Requirements: Service Animals](#).

*ADA revised regulations include a new provision about miniature horses.

Emotional Support Animals

- **Are emotional support, therapy, comfort, or companion animals considered service animals under the ADA?**
- **No.** These terms are used to describe animals that provide comfort just by being with a person. Because they have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA.

Inappropriately Responding to Service Animal Requests

- School districts have been required since March 15, 2011, to have specific procedures in place for responding to student service animal requests under the ADA.
- Courts are seeing a failure to focus upon what tasks or work the animal actually does for the student as an initial step in the determination process, rather than waiting until the school finds it inconvenient for the dog to be in school and an effort is then made, after the fact, to remove the dog from school.

Discipline

FAPE and Discipline Under Section 504

Section 504 FAPE provisions require schools to provide students with disabilities regular or special education and related services that:

1. Are designed to meet the student's individual educational needs as adequately as the need of students without disabilities, and
2. Satisfy 504's requirements for evaluation and placement, educational setting and procedural safeguards.

Discipline and Section 504

When disciplining a child under Section 504, schools must consider the relationship between the disability and the behavior if the child is going to be removed from the regular setting for longer than 10 days. *(Similar to IDEA)*

This does not necessarily mean that a student on a 504 Plan cannot be suspended or disciplined according to school policy; we just want to ensure the student's disability is considered when making these decisions.

Important Notations

A district must first evaluate a student with a disability to determine if their behavior is based on disability before imposing any of the following disciplinary actions for the student's behavior-

- An expulsion,
- A suspension more than 10 consecutive days,
- A suspension for less than 10 school days if there is a pattern of disciplinary removals totaling more than 10 school days in the school year.

Disciplinary Removals That Significantly Change Placement

A significant change in placement due to discipline means:

1. Removal from class or school for longer than 10 consecutive days, and
2. A series of removals from class or school that together total more than 10 school days in a school year and constitute a pattern of removal.

Examples of Removals That Significantly Change Placement

Expulsions and Certain Suspensions

It is **important** for districts to keep accurate records to determine whether and when a proposed disciplinary removal would be a significant change in placement.

Discipline and Section 504 – 2

(34 CFR 104.35(a))

Under the 504 regulations, an “evaluation” must occur before any “significant change in placement” occurs.

According to OCR, this includes disciplinary removals for more than 10 consecutive school days and for short-term removals that total more than 10 school days in a school year, where the pattern of those removals constitutes a “change in placement.”

Section 504's regulations do not use the term manifestation determination. OCR calls “evaluation” a manifestation determination.

Purpose of Data Collection and Review

Is the behavior proposed based on the student's disability?

What changes are required in the student's placement to ensure the application of FAPE?

The district must provide notice to the student's parent or guardian before proposing discipline that would constitute a significant change in the student's placement.

What if the behavior is a manifestation of the student's disability? (34 CFR 104.35(a))

The district may not carry out any discipline that would exclude the student based on disability. A finding that the student engaged in a disability-based behavior in violation of a school rule could be one reason to believe the student's placement may be inappropriate and the student may need additional services, such as behavioral supports, or a change in educational setting, to ensure FAPE. Therefore the 504 team must continue the evaluation process to determine if the student's current placement is appropriate, including whether the student's behavior interferes with their own or other students' ability to learn.

What if the behavior is not a manifestation of the student's disability?

The district officials may discipline the student **if the discipline is done in the same manner** as similarly situated students without disabilities.

Parents may challenge district decisions and other determinations if they disagree by following the Section 504 procedural safeguards.

Restraint and Seclusion

Physical Restraint Defined

Physical restraint, although not defined in IDEA and its implementing regulations, means a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

Seclusion Defined

Seclusion, although not defined in IDEA and its implementing regulations, is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. The term does not include a timeout, which is a behavior management technique that is part of an approved program involving monitored separation of the student in a nonlocked setting and is implemented for the purpose of calming.

Does Section 504 prohibit the use of restraint or seclusion?

No, Section 504 prohibits disability discrimination, not the use of restraint or seclusion.

However, the use of restraint or seclusion may interfere with a student's receipt of FAPE.

Also, Section 504 does prohibit secluding or restraining students with disabilities if similarly situated students without disabilities would not have been secluded or restrained under the same circumstances.

Opinion of OCR

The opinion of OCR is if a student is provided FAPE, consistent with the requirements of Section 504, evidence suggests it would likely result in reduced frequency of those situations in which the use of restraint or seclusion is justified.

For a student who has already been identified as a student with a disability, a school's repeated use of restraint or seclusion may suggest that the student's current array of regular or special education and related services is no sufficient to provide FAPE.

When does restrain or seclusion constitute different treatment?

When a school restrains or secludes a student with a disability for behavior that would not result in the restraint or seclusion of peers without disabilities, OCR would likely find that the school district engaged in discrimination prohibited by Section 504 (called different treatment)

A school that inappropriately restrains or secludes a student based on assumptions or stereotypes about disability also engages in conduct prohibited by Section 504.

What is the impact of FAPE due to the use of restraint or seclusion?

If the use of restraint or seclusion has a traumatic impact on a student with a disability, the traumatizing effect could manifest itself in new behaviors.

If school personnel are aware of behaviors that are sufficiently severe to interfere with a student's individual educational needs, and those behaviors remain unaddressed by school personnel, it could result in a denial of FAPE for that student.

What is the impact of FAPE due to the use of restraint and seclusion? (2)

The repeated use of restraint or seclusion could potentially deny FAPE to a student with a disability, and therefore might violate Section 504.

Repeated restraint or seclusion of a student could impact FAPE if the student:

- Doesn't receive the regular or special education, related aids and services;
- Doesn't receive supplemental services and modifications the student needs;
- Is not in an appropriate setting in which to receive those services.

What must a district do to provide FAPE?

CFR 34.104.34(a)

If there is reason to believe the provision of Section 504 FAPE services to the student has been adversely affected by the use of restraint or seclusion, such that the student's needs are not being met, a school has an obligation under Section 504 to take the following actions:

1. Determine if interventions and supports are properly implemented
2. Determine the need for additional or different interventions and services are necessary including PBIS and if necessary, reevaluate the student
3. Ensure any needs are made promptly
4. Remedy the denial of FAPE

504 and IDEA Comparison

Section 504 & IDEA

	SECTION 504	IDEA
Eligibility Determination	General disability definition; limits major life activity	Disability category & need for special education and related services
Evaluations	Initial & “periodic”	Initial & triannual
FAPE	Needs met as adequately as those without disabilities	Individualized education program from which child receives educational benefit
Plan	504 Plan	Individualized Education Program (IEP in writing)
Enforcement	Office for Civil Rights	Oklahoma State Department of Education Office of Special Education Programs (Federal)

Mistakes to Avoid: Medical Documentation

Requiring a Medical Diagnosis When Making a 504 Disability Determination:

- According to OCR, the 504 “evaluation” process requires two steps:
 - (1) Does the student have a disability under Section 504? (the “disability determination” step)
 - (2) If so, does the student need regular or special education under Section 504, related aids and services, or supplementary aids and services because of the disability, and in what setting should the student receive them? (the “504 plan/placement determination” step) In conducting the “disability determination” step.
- According to OCR, a medical diagnosis is not required. However, if a school district requires it as part of the 504 evaluation, the school district has the obligation to ensure that the medical evaluation is completed at no cost to the parents or the student.

Mistakes to Avoid: Substantial Limitation

Getting too bogged down when determining whether there is a substantial limitation in a major life activity for purposes of making the disability determination:

- Because 1) the ADA regulations provide that the term “substantially limits” should not require an “extensive analysis,” 2) OCR presumes that diagnosed medical conditions are “substantially limiting” impairments, and 3) the ameliorative effects of mitigating measures cannot be considered in making the disability determination, perhaps it is not worthwhile for a 504 team to spend too much time and energy on the question of “substantial limitation.”

Final Thoughts on Substantial Limitation: Discuss the Following With the School Attorney

- If at the end of the Section 504 evaluation, the Section 504 committee has identified an impairment and a major life activity impacted; BUT
- The 504 committee is unsure if the student is substantially limited;
- **The tie goes to eligibility.**

504 Resources

- [OSDE: Section 504](#)
- [Office of Civil Rights](#)
- [Office of Civil Rights 504 FAQ](#)
- [Parent and Educator Resource Guide](#)
- [504 Discipline Fact Sheet](#)
- [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504](#)
- [OCR Guide on Students with ADHD](#)

504 Resources - 2

- [Technical Assistance Video: The Use of Seclusion and Restraint Video](#)
- [FAPE under Section 504](#)
- [Placement Under Title II and Section 504](#)
- [The Civil Rights of Students with Hidden Disabilities under Section 504](#)
- [Rights & Responsibilities of Transitioning Students](#)
- [Transition Guide for High School Educators](#)